Pac. 863. But it is believed that the plaintiff's position should be governed as to negligence *per se* by the same principles which in the *Winch Case* and the mass of authorities are applied to the defendant. In the case of speed laws, too, either the statutes or the courts generally make allowance for varying conditions of traffic in determining the violation of their letter to be negligence. *Irwin v. Judge* (1909) 81 Conn. 492, 71 Atl. 572. But where exceeding the speed limit is itself shown to have been the proximate cause of the damage, Minnesota has held such violation to be negligence *per se*. *Riser v. Smith* (1917, Minn.) 162 N. W. 520. It is believed that the better rule considers the fact of the violation of such a law or ordinance to raise a presumption of negligence, sufficient to cause a directed verdict in the absence of any other showing, but rebuttable. *Hartje v. Moxley* (1908) 235 Ill. 164, 85 N. E. 216 (by statute as to motor vehicles). And it is believed that the language of other courts which seem to hold such violation to be negligence *per se* would and should be read in proper circumstances to accord with the rule here suggested. *Cf. National Casket Co. v. Powar* (1910) 137 Ky. 156, 125 S. W. 279. That rule makes due allowance for variation of circumstances, while enforcing a presumption which fits the thinking of the people at large. A similar presumption has been occasionally enforced in rule of the road cases. *Buxton v. Ainsworth* (1904) 138 Mich. 532, 101 N. W. 817. It is submitted that sound growth of the law calls for violation of such road laws, instead of being merely one fact sufficient to go to the jury and to sustain a verdict, to be held broadly to raise a rebuttable presumption of negligence or contributory negligence in the violator. Tested by this the rule in *Paulsen v. Klinge* is wholly satisfactory; also that in *Winch v. Johnson,* so far as that case refuses to hold the defendant's conduct negligence *per se;*. but that decision may, it is believed, be properly criticized for failure to raise the presumption here suggested.

TAXATION—INHERITANCE AND TRANSFER TAXES—TAX ON POWER OF APPOINTMENT EXERCISED BY DEED.—A testator who died in 1876, before any statute imposed an inheritance or transfer tax, devised real estate in New York City, giving to his son a life estate, with power to appoint in fee by deed or will to his issue or to his sisters or their issue, and limiting the remainder in case of a failure to appoint, to the son's issue or, in default of issue, to his sisters. In 1911 the son exercised the power of appointment and conveyed the property, including his own life estate, to his sisters in different proportions and interests. They immediately took possession. Three years later the son died, and proceedings were instituted to levy a tax upon his estate in respect to these lands, pursuant to section 220 of the New York Transfer Tax Law. The Surrogate confirmed a tax based upon the value of the lands at the date of the conveyance less the value of the son's life estate therein. The Appellate Division reversed this decision. *Held,* that the exercise of the power of appointment was taxable under the statute and that such a tax was constitutional. *In re Wendel's Estate* (1918, N. Y.) 119 N. E. 879.

Under the legislation of some of the states the creation of a power of appointment by the donor rather than its exercise by the donee is regarded as the act which effects a taxable transfer. *Kansas v. U. S. Trust Co.* (1917) 99 Kan. 841, 163 Pac. 156; see Ross, *Inheritance Taxation,* 106. But New York and certain other states have legislated upon the opposite theory. The principal case presents for the first time to the New York Court of Appeals the important question whether an appointment by deed not made in contemplation of death is a taxable transfer. The initial inquiry is, of course, one of construction of the statutory language. The sixth subdivision of section 220 of the Transfer Tax

provides that "whenever any person or corporation shall exercise a power of appointment . . . such appointment when made shall be deemed a transfer taxable . . . in the same manner as though the property [appointed] belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will." This language, the court holds, since not limited to a particular form of transfer, must be given its ordinary meaning which includes an appointment by deed as well as one by will—particularly since a corporation, which is obviously contemplated as a possible donee of a power of appointment, cannot act by will. The argument for a more limited construction had prevailed below. *In re Wendel's Estate* (1917, App. Div.) 168 N. Y. Supp. 297. The second inquiry involves the constitutionality of such a tax. The validity of a tax upon the execution of a power of appointment by will had long been established. *Chanler v. Kelsey* (1907) 205 U. S. 466, 27 Sup. Ct. 550. Clearly it is as much the exercise of a power to appoint by deed as it is to appoint by will, and no valid constitutional objection exists to taxing such a power. It should be noted, however, that where the execution of the power of appointment does not pass to the persons in whose favor it is exercised more than they would take under the will of the donor of the power in default of an appointment, the property, for purposes of the transfer tax, is deemed to pass under the will of the donor. *Matter of Lansing* (1905) 182 N. Y. 238, 74 N. E. 882; *In re Chauncey's Estate* (1918, Surr. Ct.) 168 N. Y. Supp. 1019. But *cf. Minot v. Stevens* (1911) 207 Mass. 588, 93 N. E. 973. In the principal case the sisters acquired by the exercise of the power of appointment a different title than they had under the will of the donor.